

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW MEXICO**

UNITED STATES OF AMERICA,

Plaintiff,

vs.

No. 20-CR-01903 MV

JOSE PENA,

Defendant.

MEMORANDUM OPINION AND ORDER

THIS MATTER is before the Court on one of Mr. Pena’s four motions *in limine* in his omnibus motion, namely, the motion *in limine* to consolidate Counts 2-9 of the Superseding Indictment under the rule against multiplicity [“Consolidation MIL”] [Doc. 69]. The government filed a response to Mr. Pena’s motions *in limine* [Doc. 75], and Mr. Pena filed a reply [Doc. 79]. On April 19, 2022, Mr. Pena filed a notice to withdraw the Consolidation MIL. Doc. 111. Having carefully considered the briefs and relevant law, and being otherwise fully informed, the Court finds that the Consolidation MIL is **MOOT**.

BACKGROUND

Mr. Pena was charged by indictment on October 16, 2020 on eight counts of Production of Visual Depictions of a Minor Engaging in Sexually Explicit Conduct, in violation of 18 U.S.C. §§ 2251(a), 2251(e), and 2256. Doc. 1. On June 9, 2021, a Superseding Indictment was filed, charging Mr. Pena with one count of Coercion and Enticement, in violation of 18 U.S.C. § 2422(b), as well as eight counts of Production of Visual Depictions of a Minor Engaging in Sexually Explicit Conduct, in violation of 18 U.S.C. §§ 2251(a), 2251(e), and 2256. Doc. 32. On April 13, 2022, a Second Superseding Indictment was filed charging Mr. Pena with one count of Coercion

and Enticement, in violation of 18 U.S.C. § 2422(b), and two counts of Production of Visual Depictions of a Minor Engaging in Sexually Explicit Conduct, in violation of 18 U.S.C. §§ 2251(a), 2251(e), and 2256. Doc. 103.

DISCUSSION

In the Consolidation MIL, Mr. Pena moves the Court “to consolidate counts 2-9 of the superseding indictment under the rule against multiplicity.” Doc. 69 at 5. He argues that these counts “are based on 8 clips of the same video,” and thus that “the Government charged Mr. Pena 8 times for the same offense.” *Id.* Mr. Pena argues that this multiplicity may violate the Double Jeopardy Clause and therefore that Counts 2-9 should be consolidated into a single unit of prosecution. *Id.* at 6.

On April 13, 2022, the government filed a Second Superseding Indictment charging Mr. Pena with one count of Coercion and Enticement, in violation of 18 U.S.C. § 2422(b), and two counts of Production of Visual Depictions of a Minor Engaging in Sexually Explicit Conduct, in violation of 18 U.S.C. §§ 2251(a), 2251(e), and 2256. Doc. 103.


On April 19, 2022, Mr. Pena filed a notice to withdraw the Consolidation MIL, acknowledging that the Second Superseding Indictment “effectively consolidate[d] the multiplicitous counts.” Doc. 111 at 2.

Accordingly, the Court finds the Consolidation MIL moot.

CONCLUSION

IT IS THEREFORE ORDERED that the Consolidation MIL is **MOOT**.

ENTERED this 20th day of April 2022.



MARTHA VAZQUEZ
UNITED STATES DISTRICT JUDGE